



Maine Creditor Update

Office of Consumer Credit Regulation



Issue #38

Regulatory News for Maine's Creditors

October/November 1999

New Laws Take Effect

Several new laws, many with effective dates of September 18, 1999, will impact the way creditors and lenders operate in Maine.

1. Public law (PL) 1999, Chapter 145, "Funded Settlements." This new law requires lenders to disburse funds to settlement agents at or before the closing for non-rescindable loans, or by noon of the day after the 3-day rescission period expires on rescindable loans. The law also requires prompt recording of closing documents by the settlement agent. In other states, this type of law is often referred to as a "Wet Funding" provision, apparently because it requires that there be "water" (money) in the "bucket" (settlement account) at, or soon after, a mortgage closing.
2. Chapter 150, Alignment of the Credit Code with Federal Laws. This legislation a) removes the requirement for a "consumer notice" on credit contracts, but clarifies that consumers are entitled to receive a copy of the agreement; b) permits "change in terms" notices in credit card agreements, without the need for a creditor to finance the balance at the previous rate; c) repeals unique "hypothetical example" disclosure requirements on home equity loans; d) establishes a 90-day time period during which a consumer can request from a creditor a free copy of any appraisal for which the consumer has been charged; e) permits assessment of repossession fees

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Proposed Bill Would Permit Non-Profit Credit Counselors

The Maine Legislature will soon have the opportunity to consider whether to permit the operation of non-profit credit counseling services in this State.

Attorney Charles Micoleau of Portland has reportedly found sponsors for a draft measure to allow such companies to serve consumers, if the companies comply with registration and bonding requirements.

Currently, such "budget planning" is restricted to financial institutions, or organizations established by such institutions, such as Consumer Credit Counseling Services of Maine, Inc. (CCCS).

The bill, LR 3670, titled "An Act to Amend the Fair Debt Collection Practices Laws," will likely be considered either by the Banking and Insurance Committee or the Business and Economic Development Committee.

Repo Company Laws Protect Consumers and Creditors

The Office of Consumer Credit Regulation licenses repossession companies conducting business in Maine. In the technical language of Maine's Fair Debt Collection Practices Act, licensing is required if any individual or company "regularly engages in the enforcement of security interests securing [consumer] debts." And, as the hundreds of Mainers whose automobiles are towed back to dealerships and banks each year can attest, repossession is a very immediate and direct way to "enforce" a creditor's security interest.

Applicants for a repo license provide fingerprints for background checks, and prove through accountants' reports that their companies have a net worth of at least \$10,000. In addition, they post a \$15,000 bond. Any person who can demonstrate financial harm resulting from a violation of the law by a repossession company, can apply to recover against the bond.

The license and bond provide a measure of accountability and protection not only for consumers, but also for creditors and

See Roster of Currently Licensed Repossession Companies

page 6

lenders that hire recovery companies. Done properly, a repossession involves minimal or no contact between the reposessor and the consumer. Handled poorly, the event can become a confrontation with potential for harm.

The rules are fairly simple. A repossession can take place if 1) a "notice of right to cure," when required, has been sent, and the cure period has expired; 2) the repossession company is licensed; 3) the recovery can be accomplished without force or a breach of the peace; and 4) it can be completed without entry into a dwelling.

Following a repossession, the repo company must prepare an inventory of any property not covered by the security agreement, and must notify the customer that the property will be made available in a manner convenient to the consumer.

Of the thousands of repossessions which have taken place in Maine during the past decade, only a handful have resulted in civil charges or claims against the bonds. In one case, a reposessor showed up at the debtor's door with a pistol in his belt. In another, chrome parts disappeared off a Harley Davidson

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Mailing Address

Office of Consumer Credit Regulation
35 State House Station
Augusta, Maine 04333-0035
Tel (207) 624-8527
Fax (207) 582-7699

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Office Location

Gardiner Annex
122 Northern Ave., Gardiner, ME 04345

World Wide Website
www.MaineCreditReg.org

License, Registration Activity (not including renewals); April '99-Sept. '99

See detailed, updated roster on the web at MaineCreditReg.org, under "Licensing/Registration"

Supervised Lenders

Aames Home Loan (2 Offices Licensed)
 Aegis Mortgage Corporation, Houston, TX
 AIM HI Mortgage, Tampa, FL
 Allied Mortgage Capital Corporation (4 Offices Licensed)
 America's Cashline Corp., Scottsdale, AZ
 America's Wholesale Lender, Dallas, TX
 American Home Loans (2 Offices Licensed)
 Associates Financial Services Company, Inc. (6 Offices Licensed)
 Associates Housing Finance, LLC, Cincinnati, OH
 Assurance Mortgage Corporation of America (5 Offices Licensed)
 Aurora Loan Services, Inc. (2 Offices Licensed)
 Axiom Financial Services (2 Offices Licensed)
 Banc of America RV Finance, Yorba Linda, CA
 C & P Financial, Silver Spring, MD
 Centex Home Equity Corporation, Portsmouth, NH
 Chase Manhattan Mortgage Corporation (3 Offices Licensed)
 Column Residential Corporation (2 Offices Licensed)
 Counrywide Home Loans, Inc. (6 Offices Licensed)
 Crossland Mortgage Corporation, Sanford, ME
 CTX Mortgage Company, Dallas, TX
 Debis Financial Services, Inc., Roanoke, TX
 Directors Acceptance, Baton Rouge, LA
 East/West Funding, Peabody, MA
 Edlin Mortgage, Baltimore MD
 Emigrant Funding Corporation, Boston, MA
 Equity Direct Mortgage Corporation, Laguna Hills, CA
 Fairbank Acquisition Corp., Waterbury, CT
 FHB Funding, Mineola, NY
 Fidelity Funding Home Lending, Inc., Richardson, TX
 Financial Benefit Services Corp., South Portland, ME
 Finet Direct, San Ramon, CA
 Finet.Com, San Ramon, CA
 First Resource Financial, Inc., Ellsworth, ME
 Fleet Mortgage Corp., East Providence, RI
 Full Spectrum Lending, Inc., Simi Valley, CA
 GMAC Mortgage Corporation (2 Offices Licensed)
 Golden National Mortgage Corp., Melville, NY
 Homeowners.Com, Inc., San Francisco, CA
 Homesense Financial Corp., Lexington, SC
 Household Finance Corporation II, Wood Dale, IL
 Infinity Mortgage Company, Quincy, MA
 Instamortgage.Com, Mt. Laurel, NJ
 Interloan, San Ramon, CA
 iOwn, Inc., (2 Offices Licensed)
 Legend Financial Group, Inc., South Portland, ME
 Lenders Spectrum Mortgage, Inc., Lake Forest, CA
 LFS Mortgage (2 Offices Licensed)
 Lighthouse Funding, Inc., W. Farmington, ME
 Lighthouse Lending, LLC, Farmingdale, ME
 LoanWorks (3 Offices Licensed)
 Maine Street Mortgage Company, Inc., Windham, ME
 Master Financial, Inc., Orange, CA
 MoneyNow Mortgage Corporation, Boston, MA
 Morgan Stanley Dean Witter Credit Corporation, Rancho Cucamonga, CA
 Nationwide Home Mortgage Company, West Des Moines, IA
 NEMC Mortgage, LLC (2 Offices Licensed)
 Norwest Mortgage, Inc., Portsmouth, NH
 Oakwood Acceptance Corporation, Carmel, IN
 Old Kent Mortgage Company (3 Offices Licensed)
 OnCall Mortgage, Emeryville, CA
 OnLine Capital, Montvale, NJ
 Positive Mortgage, Inc., New York, NY
 Primesource Financial, LLC, Charlotte, NC
 Prism Mortgage Company, Chicago, IL
 PSB Lending Corp., Plano, TX
 Sammons Mortgage, Inc., Lincoln, RI
 Source One Mortgage Corporation (4 Offices Licensed)
 The Money Store, Manchester, NH
 True North Mortgage Corp., Cape Elizabeth, ME
 UC Lending (4 Offices Licensed)
 World Wide Financial Services, Inc., Southfield, MI

Debt Collectors

Access Recovery, Westbrook, ME
 Bombardier Capital Florida, Inc., Jacksonville, FL
 Collection Bureau of Hudson Valley, Inc., Newburgh, NY
 Compass Receivables Management, L.P., Houston, TX
 Corporate Collection Services, Inc., Cleveland, OH
 Delta Management Associates, Inc., Chelsea, MA
 Exterra Credit Recovery, Inc., Baton Rouge, LA
 Franklin Financial, Inc. of Massachusetts, Milford, MA
 Homecomings Financial Network, Inc. (3 Offices Licensed)
 Mountain States Adjustment, Casper, WY
 National Revenue Corporation, Columbus, OH
 NCO Financial Systems, Inc. (7 Offices Licensed)
 OSI Collection Services, Inc., Augusta, ME
 Recovery Bureau of America, Inc., Santa Clarita, CA
 Risk Management Alternatives, Inc. (5 Offices Licensed)
 Surpas Resource Corporation, Houston, TX
 The Credit Store, Inc., Sioux Falls, SD
 Tritium Card Services, Inc., Uniondale, NY
 United Collection Bureau, Inc., Toledo, OH
 United Credit Systems, Inc., Atlanta, GA
 United Creditors Alliance Corporation (5 Offices Licensed)
 Universal Fidelity Corporation, Houston, TX

Repossession Companies

Nappi's Towing, Inc., Portland, ME
 Tardiff Towing, Westbrook, ME

Credit Services Organizations

Altus Mortgage, Reno, NV
 CFN Finance Inc., Duluth, GA
 Discount Mortgage Center, Inc., Cumberland, RI
 East West Mortgage Co., Inc., McLean, VA
 Eastern Atlantic Mortgage, Burlington, MA
 Graiver Realty Group, So. Portland, ME
 Lighthouse Mortgage, LLC, Cape Elizabeth, ME
 Mortgage Alternatives Corp. d/b/a Mortgage Advocates, Foxboro, MA
 Mortgage Priority, Scottsdale, AZ
 Mullen Financial Services, Inc., St Albans, VT
 National Loan Consultants, Caribou, ME
 Pine State Mortgage Co., Hudson, ME
 Schiavi Homes, LLC, Oxford, ME
 Security Financial Mortgage Corp., Riverside, CA
 Summerfield Mortgage Co., Inc., Livermore, ME
 Universal Mortgage, Inc., Ellsworth, ME

OFFICE OF CONSUMER CREDIT REGULATION

Director William N. Lund
 Principal Examiner Del Pelton
 Principal Examiner Richard Howard
 Research/Outreach David Stetson
 Senior Examiner Mary Young
 Senior Examiner Douglas Stark
 Administrative Secretary Doris Whitaker
 Clerk/Typist III Lorna Plaisted
 Clerk/Typist II Susan Giampetruzzi

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Noteworthy Quotes

“Thank you for our recent communication. It is our office regarding our credit file. We have contacted the company as you mentioned in our dispute, and/or information has been updated as indicated on the enclosed copy.”

-A computer-generated letter to a Bangor, Maine man from a Buffalo, NY credit bureau telling him that errors in his credit report had been corrected.

“Good investment advice is perhaps the rarest of commodities.”

-Advertisement by Datek Online, an Internet broker, discussing the risks and opportunities of online investing.

“In 1994, the average credit card late fee was \$11.97. Now it's \$24.33. Average over-the-limit fees have grown during the same period from \$12.57 to \$23.65. In that five years, income from various card fees has increased 160%, from \$7.3 billion to \$10.9 billion.”

-CardTrack, July 1999.

“I keep getting doctor's bills which should go to my ex-wife. It's bills for female-type tests and exams. Last week they even tried to charge me for a monogram!”

-Maine consumer whose name is still on his ex-wife's file as responsible financial party at the medical clinic.

“Hi, I'm not home right now. If you are the phone company, I've sent the money. If you're my parents, send money. If you're my bank, you didn't send me enough money. If you're my friends, you owe me money. If you're interested in a date, don't worry, I've got plenty of money.”

-Answering machine, Portland.

“32 days after I bought the used car, all the hosing broke. The dealer said it was tough luck, because I only had a 30-day warrantee. ‘Hosing’ is right.”

-Biddeford, Maine consumer.

“My international Internet sales are soaring, but the process is subject to occasional glitches. I directed one English customer to transfer funds to my account at Norway Savings Bank. The money ended up in Oslo.”

-A Maine merchant.

“The advertisement for the Skowhegan auto dealer said: ‘Bankruptcy? No problem. Repossessions? No problem. Charge-offs? No problem.’ I have had all those things, and now they're telling me that selling me a car on credit is going to be a problem.”

-Farmington, Maine consumer.

Mortgage company letter:

Dear Mortgager: We understand that life is full of uncertainties. Perhaps . . . you have forgotten to make your April payment.

Written response from Bangor consumer [whose April payment check had been cashed 3 weeks earlier]:

Dear Lender: While my life may be uncertain, it is not nearly as uncertain as what happens to my check after I mail it to you people.

Bryson: “Are you in good shape?”

Katz: “Yes, I walk everywhere these days.”

Bryson: “Really? That's unusual in America.”

Katz: “Well, they repossessed my car, you see.”

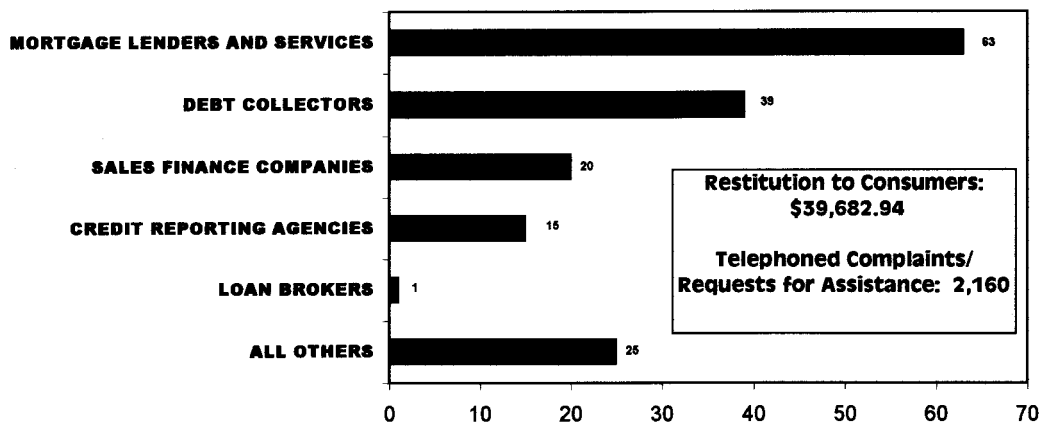
-Dialogue between two primary characters in Bill Bryson's new nonfiction book “A Walk in the Woods: Rediscovering America on the Appalachian Trail” (Broadway Books, NY - 1998)

“This credit card account was opened by my wife who was seeing another man while I was out of state serving our country during Desert Storm. I can tell you with 100% certainty that it's not mine! Why should I have to pay it?”

-A central Maine man, trying to clear up his credit report.

See More Quotes!
on Page 4

CONSUMER COMPLAINT REPORT
Formal Written Complaints by Business Type
January - September 1999
By David G. Stetson, Consumer Outreach Specialist



It is hoped that this service will eventually result in both decreased printing and mailing costs, and increased circulation.

Examination Summary April-September, 1999

by Del Pelton, Principal Examiner

Total Exams (including 208 in-house exams) 393

By Business Type:

Supervised Lenders	150
Auto Dealers	80
Leasing Companies	49
Loan Brokers	44
Sales Finance Companies	20
Pawn Shops	15
Debt Collectors	15
Retail Merchants	12
Rent-to-Own Stores	05
Credit Reporting Agencies	02
Time Share/Condo	01

Total restitution to consumers from examinations: \$52,422.86

Most Common Violations:

Supervised Lenders: Incomplete "Bring your own attorney" notices	82
Loan Brokers: Failure to escrow advance fee	62
Loan Brokers: No agreement or disclosure provided	46
Auto Dealers: Incomplete truth-in-lending disclosures	44
Supervised Lenders: Incorrect credit denial notices	39
Supervised Lenders: Incorrect forms	39
Loan Brokers: Incomplete disclosures provided	31
Supervised Lenders: Late charges wrongly assessed on 2nd mortgages	30
Loan Brokers: All fees to broker not disclosed	20
Loan Brokers: Incomplete disclosures provided	18
Supervised Lenders: Incomplete disclosures	15
Sales Finance Companies: Incorrect forms	11
Auto Dealers: Incorrect disclosures	11

New Laws continued from page 1

in an auto lease default; f) permits creditors to avail themselves of civil check recovery remedies pursuant to 14 MRSA, 6071 et seq.; and g) repeals several unique credit reporting requirements.

3. Chapter 184, Miscellaneous Credit and Collection Amendments. This provision a) increases the supervised lender bond from \$25,000 to \$50,000; b) increases the permitted finance charge on a small loan of between \$75 and \$250, from \$7.50 to \$15.00; c) permits late fees on closed-end second mortgages; d) permits state agencies to share information among themselves, and with federal agencies, for purposes of cooperation and enforcement; and e) establishes a "branch office" license for debt collectors.
4. Chapter 211, "Doc Fees." Requires an automobile dealer to post any "document preparation" fees which will be charged to a purchaser.
5. Chapter 212, Lemon Law. Among other provisions, this law permits an arbitrator to reimburse a consumer for the cost of having a mechanic or engineer prepare a report or testify regarding a defective vehicle.
6. Chapter 230, Prompt Mortgage Discharge. Establishes financial penalties of up to \$5,000 for any owner or servicer of a mortgage who fails to record a discharge in the Registry of Deeds within 60 days of the date of a consumer's payoff of the debt.
7. Chapter 386, Lender Not "Transient Seller." This law excludes a licensed supervised lender from the provisions of 32 MRSA 4681, which requires registration of out-of-state marketers.
8. Chapter 401, Payment to the State by Credit Card. Part E of the Supplemental Budget law permits the payment of state fines and fees by credit card. Processing fees, however, must be absorbed by the state agency, and cannot be surcharged to the payer.
9. Chapter 446, State Agency Forms on the Web. This provision requires all state agencies to offer downloadable filing forms by June 1, 2000.

Lock-in Complaints Rise with Interest Rates

With mortgage interest rates moving slowly upward, the Office of Consumer Credit Regulation has begun to see a corresponding increase in rate-lock complaints.

At the time of mortgage application, consumers are often provided with the option of paying an extra fee in order to lock in a specific rate. The rate lock period is often 60 days.

Problems arise whenever delays in preparation for the closing cause the rate lock expiration date to loom near. Accusations then fly concerning which party or parties are responsible for the delays.

This period of slowly rising rates provides an opportunity for state regulators to remind lenders of the principles to be applied to consumer complaints regarding expired rate locks. One important factor in avoiding problems is to establish an understanding concerning the importance of timely responses to requests for additional information. In the past, the Bureau of Banking and the Office of Consumer Credit Regulation have rec-

ommended that lenders include the following notice in rate lock agreements:

IMPORTANT NOTICE

We expect that, barring a problem with your application (such as credit problems, title flaws, or incomplete information) the loan, if approved, will be able to close within the rate lock period you choose. You can help prevent delays by responding promptly to information requests and ensuring that your employer, creditors, and financial institutions promptly answer our information requests as well. Any event which is caused by those sources, by you or a third party retained by you (such as your title attorney or builder, applicable), which delays closing beyond the rate lock period WILL RESULT IN A HIGHER RATE OR MORE POINTS BEING CHARGED ON YOUR LOAN IF INTEREST RATES ARE HIGHER AT THAT TIME.

In addition, state regulators will expect lenders to fulfill their commitments to their customers. As a general rule, if a loan does not close within the rate lock period due to delays through no fault of the consumer, state agencies will require lenders to honor the terms of the rate lock agreements.

Repo Company Laws *continued from page 1*

motorcycle between the time of repossession, and the time the vehicle was sent to the dealers' auction. In a third case, a woman claimed that her Pekinese had been "drop-kicked" when it barked at the repo man in the driveway. And finally, a Lewiston-area woman alleged several years ago that she slid down a snowy road in her bathrobe and slippers while hanging onto her vehicle's doorframe after she interrupted a repossession in progress.

In each case, regulatory or civil action led to satisfaction of pending claims. Often, the threat of applying against the bond is sufficient to encourage settlement, since obtaining future bonds becomes expensive once claims are paid by a bonding company.

In past years, it was common for police officers to "stand by" during a repossession, or even (according to one consumer) order a consumer to either get out of a car to allow repossession, or face "trespassing" charges. Due to subsequent educational efforts, law enforcement officials now understand that repossession is a "civil" remedy and that their presence on site is not an appropriate role to play in such a private effort.

The list below constitutes the current roster of licensed repossession agencies. Creditors and lenders are strongly urged to request copies of current licenses before hiring repossession companies.

NAME OF COMPANY	LICENSE NUMBER
A-1 TOWING AND RECOVERY	0657
18 Milliken Milk Road - PO Box 295, Old Orchard Beach, ME 04064	
ACADIA RECOVERY, INC.	0642
Murray Road, Newburgh, ME 04419	
ACCESS RECOVERY;	0891
JIM MARCOUS AND BRIAN BEAULIEU, JR., D/B/A	
32 Hereford Avenue, South Portland, ME 04106	
ACTION COLLECTING AGENCY	0664
Ace Detective & Security Agency, Inc. d/b/a	
11 Bellegarde Avenue, Lewiston, ME 04240	
AMERICAN AUTO TRANSPORT & RECOVERY	0647
90 Dow Highway _ Suite 4, Eliot, ME 03903	
CAPITAL RECOVERIES, INC.	0667
135 McDonough Street, Portsmouth, NH 03801	
CHUCK'S AUTO RECOVERY	0631
Charles A. Robbins, Jr. d/b/a	
21 Adams Street _ Lakewood Road, Skowhegan, ME 04976	
COUNTY FINANCIAL SERVICES, INC.	
P.O. Box 1820, 29 Second Street	0641
Presque Isle, Maine 04769	
(Both Repossessions and Debt Collection)	
J.A.C. ENTERPRISES, INC.	0678
602 Main Road North, Hampden, ME 04444	
MAINELY TOWING, LLC	0637
33 Rigby Road, S. Portland, ME 04106	
NAPPI'S TOWING, INC.	0843
20 Highland Avenue, Gorham, ME 04038	
NATIONWIDE RECOVERY SERVICES, INC.	0839
483 Groveland Street, Haverhill, MA 01830	
NORTHEAST ADJUSTMENT BUREAU	0856
Associated Reporting Systems, Inc. d/b/a	
100 Fellsway West - PO Box 45276, Somerville, MA 02145-0999	
PLEASANT HILL AUTO SALES, INC.	0903
154 Pleasant Hill Road, Scarborough, ME 04074	
SECURED CREDITORS SERVICES, INC.	0894
RFD #1 - Box 75 - Route 27, Belgrade, ME 04917	
T & J TOWING CO.	0823
Joseph Nightingale d/b/a	
PO Box 9739-1096, Portland, ME 04104	
TARDIFF TOWING;	0828
KEVIN TARDIFF, D/B/A	
717A Bridgton Road, Westbrook, ME 04092	

Consumer Outreach Position:**❖ Brown Retires; Stetson Hired ❖**

Michael Brown, our agency's Consumer Outreach Specialist for more than a decade, retired August 31, 1999. During her tenure, Ms. Brown worked tirelessly to assist and counsel consumers with credit complaints and problems, and the results were recognized by many individuals over the years (see related story, below).

Her position has been filled by David Stetson, former Division Supervisor with the Maine Bureau of Insurance. Stetson, who holds a Master's degree in Education, also teaches college courses in the evening at the University of Maine in Augusta. He has extensive experience in consumer assistance, legislative development, and statistics.

❖ Kudos for Brown ❖

Michael Brown retired in August as the Consumer Outreach Director of the Office of Consumer Credit Regulation, after assisting Maine citizens for 12 years. During her time with our agency, lenders, creditors and brokers returned more than \$1 million to Maine consumers as a result of complaint resolutions. Over the years, more than 100 consumers and government officials wrote our office, thanking Mike for her work on their behalf. A sampling of their comments is found below:

"In a day when government is often maligned for incompetency and inefficiency, it is a pleasure to have a sterling example of the opposite. It is comforting to know that regulatory agencies such as your exist and are capable of enforcing the laws effectively."

❖ A Presque Isle, Maine consumer; June 14, 1987

"In a world full of red tape and intimidation, your advice, support and follow-through helped provide a positive view of our system."

❖ Winslow; April 6, 1989

"Please put these flowers in your office as an expression of our gratitude."

❖ Brewer; March 5, 1991

"Because of your help with our credit reporting problem, we have a great deal more respect for state government."

❖ Saco; April 15, 1992

"It is reassuring that we have someone like you out there willing to protect the typically confused consumer."

❖ Newburgh; April 13, 1993

"A recent letter from a consumer drew my attention to the quality service you provided to a member of his family. Your actions have displayed a level of competence that reinforces the public's confidence in State government. Keep up the good work."

❖ Governor R. John McKernan, Jr.; January 4, 1995

"This letter hardly allows room for expressions of my gratitude."

❖ Hallowell; March 2, 1996

"Congratulations and thanks for your help on behalf of the consumer from York. He wrote me a nice letter. You make us all look good."

❖ Governor Angus King, Jr.; May 22, 1999

ATM News

With the passage last legislative session of Public Law Chapter 229, "An Act to Protect Consumers of Nonbank Cash-dispensing Machines," the Office of Consumer Credit Regulation will be responsible for ensuring compliance with fee notice, servicing and registration standards for non-bank owned ATM terminals beginning January 31, 2000. In recognition of this new responsibility, the *Maine Creditor Update* presents a special section compiling recent ATM-related news items.

Early ATM Registrations Flow In

Although they are not due until January 30, registrations for non-bank ATMs are already arriving at the Office of Consumer Credit Regulation.

The new registration law, designed to help both consumers and merchants by improving the accountability of ATM operators and servicers, also requires that users be notified of the fee charged.

Registrations so far have been received primarily from networks with multiple terminals (such as Diebold, with 23 locations), or servicers (including ATM Cash Dispensers, Inc. of Brooks, Maine) registering units on behalf of their clients.

Registration information is available on the agency's Internet site, www.MaineCreditReg.org, or by writing or calling our office.

San Francisco, Santa Monica Attempt ATM Fee Bans

Two California communities have attempted to limit ATM fees, with limited results (see related items, below). An ordinance went into effect November 12 in Santa Monica, while a second was approved by San Francisco voters, effective January 1, 2000. Large banks responded by limiting the use of such banks to their own customers, and by filing civil challenges asserting federal preemption over such local laws.

Preliminary Injunction Granted

California financial giants Bank of America and Wells Fargo obtained preliminary injunctions in late November, preventing the imposition of ATM fee bans approved by the Santa Monica City Council and by San Francisco voters.

The court action followed the banks' initial response, which was to cut off access to ATMs by non-account holders. While the banks claim that bans on fees are unconstitutional, supporters of the ban say that 60% of all ATMs in the area are operated by the two banks, resulting in a lack of real choice by consumers. The two banks reportedly operate more than 500 terminals in San Francisco.

Maine Credit Unions Promote Fee-Free ATMs

The Maine Credit Union League recently took out paid advertising touting the "Surcharge Free Alliance" (known as "SURF"), which is a group of more than 30 credit unions which have agreed to permit use of one another's ATM cards without adding fees. Consumers can locate participating institutions by utilizing the "CU24 ATM locator" search feature on the League's homepage at www.MaineCUL.org.

"Financial Modernization" Bill Contains ATM Requirements

The Financial Modernization bill recently passed by Congress and signed into law (S.900) requires notice to consumers regarding ATM fees. The bill requires that the amount of the fee appear on the machine, and on the screen, in such a manner as to allow a consumer to stop the process and avoid the fee. Older machines without the "opt-out" capability are exempt.

September Flood in New Jersey Shuts Down Maine ATMs

On September 17 and 18, 1999, a tropical storm named Floyd caused flooding in an AT&T building in Rochelle Park, New Jersey. The resulting short circuits caused over 500 ATMs to cease functioning, including many operated in Maine by Peoples Heritage Bank. Cell phones also went dead in New York City as a result of the same flooding.

Military Wants ATM Fee Ban

In mid-October, the U.S. Department of Defense raised the possibility of prohibiting ATM fees on 400 military bases around the country. It claims that such fees harm military personnel, who are often transferred to new locations without time to close or open new accounts. Defense Department lawyers feel that the charging of such fees may violate the terms and conditions under which ATMs were first permitted on military bases.

Moscow ATM Users Face Losses

Thieves in Moscow have infiltrated ATM machines used by foreigners, resulting in thousands of dollars of unauthorized withdrawals, according to the Associated Press. In a manner not yet fully understood, the scammers were able to copy the magnetic codes of the ATM cards, capture the personal identification (PIN) numbers, and manufacture duplicate cards used to clean out various accounts. Four arrests were made in Germany earlier this year, but the full scope of the practice is still being determined.

Courts Go Both Ways on ATM Regulation by States

Bankers' challenges to the new ATM bans in California are based partly on the argument that only federal regulators can restrict the practices of nationally-chartered banks. Ten years ago, in a case that predated ATM fees, the 9th U.S. Circuit Court of Appeals, which includes California, rejected that argument, stating that Congress "has declined to restrict state regulation in the ATM context." However, in September, 1999, the 8th U.S. Circuit Court of Appeals, in a case involving Iowa, reached a different result, holding that federal law preempts state limitations.

Ask the Director - "Script" ATM Machine

- Q.** Regarding the new Maine law requiring non-bank ATM machines to be registered, must we register a "script" machine? It does not dispense money, but records a withdrawal on a paper receipt, which the consumer then brings to a store's counter to obtain the cash.
- A.** Yes, in our opinion this type of machine qualifies as an ATM machine, and must be registered.

Auto "Gimmeback" Agreements Deemed Unconscionable

A Maine auto dealership has been told to cease the practice of "spot delivery," in which a purchaser of a car agrees at the time of sale to bring the car back if the dealer cannot find a finance company willing to purchase the credit contract.

The phrase "spot delivery" is used because the consumer is urged to leave his or her trade-in, and drive home in the new car "on the spot." The side agreements by which consumers agree to bring the vehicles back are known alternately as "McArthur Statements" (as in, "I shall return" with the car), or "Gimmebacks."

In a report resulting from a compliance examination, the exam division of the Office of Consumer Credit Regulation told the dealership that such a unilateral arrangement is unconscionable, because the consumer can be held to the contract while the dealership can back out. The dealership was told that a different decision might be reached if consumers also have the option to change their minds and rescind the sales. (No such right of rescission for automobile sales is currently found in state law, despite widespread belief to that effect.)

Spot deliveries raise many troubling enforcement issues, including:

- 1) Who owns the vehicle? Can it be registered or insured?
- 2) How will a dealership recover the vehicle from an unwilling consumer? Has a default occurred? Repossession cannot ordinarily take place without a default by the consumer.
- 3) What if the call-back is a ploy to pressure the consumer into alternate financing at a higher cost? The consumer is in a bind, especially (as has happened) when the consumer's trade-in has already been sold off the dealer's lot.

Five states have enacted specific laws restricting spot deliveries. The Office of Consumer Credit Regulation believes that Maine dealerships will likely amend their practices without the need for new laws. Contract law is based on the legal concept of "mutuality of obligation," and if dealers assert a right to rescind otherwise binding credit contracts, that may result in courts being more willing to permit rescission by consumers, as well.

High-Tech Tools Used to Teach Prevention of Low-Tech Loan Fraud

The Office of Consumer Credit Regulation went high tech recently, utilizing the state's interactive television system to electronically "meet" with newspaper classified ad editors in Portland and Presque Isle.

From a small studio in Augusta, Outreach Specialist David Stetson and Director Will Lund conducted a three-way dialogue, using a system called Asynchronous Transfer Mode (ATM) broadcasting.

The editors were told that their readers tend to blame the newspapers if the papers run ads which result in the consumers losing money, especially to fraudulent, out of state or Canadian loan brokers.

The best prevention, the editors were told, is 1) to require that lenders or loan brokers include their Maine license or registration number in their advertisements; and 2) to insert a small "Notice to Consumers" (reprinted below) in the classified sections most commonly used by those making fraudulent credit offerings, usually titled "Money to Lend" or "Mortgages."



Any advertisers who balk at including registration or license numbers may not represent a loss of revenue for the newspaper: several papers have told state regulators that credit card numbers used to pay for such ads are often stolen, and result in chargebacks to the newspapers' accounts.